

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

OSCAR GARNER,

Plaintiff,

v.

PETER HUIBREGTSE, Warden;
RUBIN ASCH; RANDY GAYE; GARY
MAIER; CHARLES YUNGHANS; and
SHANNON SHARPE,

Defendants.

ORDER

09-cv-301-slc

On September 21, 2009, I denied plaintiff's request to proceed in forma pauperis on appeal. Now before the court is plaintiff's motion to include newly submitted exhibits as part of the appeal record. I construe plaintiff's motion as a motion pursuant to Fed. R. App. P. 10(e) to modify the record on appeal and will deny it.

Fed. R. App. P. 10(e) states in relevant part,

(2) If anything material to either party is omitted from or misstated in the

record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

- (A) on stipulation of the parties;
- (B) by the district court before or after the record has been forwarded; or
- (C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

The exhibits plaintiff submitted with his motion were not before this court in this proceeding. Therefore, they are not material to the appeal and should not be part of the appeal record.

ORDER

IT IS ORDERED that plaintiff's motion to modify the record on appeal, dkt. #17, is DENIED.

Entered this 28th day of September, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge